

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JUSTIN P. POSEY,

Petitioner,

v.

Case No. 20-CV-368

MICHAEL MEISNER,

Respondent.

RULE 4 ORDER

Justin P. Posey, who is currently incarcerated at Redgranite Correctional Institution, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket # 1.) Posey has paid the \$5.00 filing fee and his petition is ready for screening in accordance with Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4 of the Rules Governing Section 2254 Cases, I must dismiss a petition summarily if “it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” During this initial review, I determine whether the petitioner has set forth cognizable constitutional or federal law claims and exhausted available state remedies.

Posey alleges denial of his rights to due process, confrontation, compulsory process, to present a complete defense, and the effective assistance of counsel. (Docket # 1 at 5–10.) At least some of these claims are cognizable in federal habeas review. Posey concedes that he has not fully exhausted his claims. (*Id.* at 5–12, 15.) Ordinarily, a petition with unexhausted claims is dismissed. *Rose v. Lundy*, 455 U.S. 509 (1982). However, a petition may instead be stayed and held in abeyance while the petitioner exhausts state court remedies. *Rhines v.*

Weber, 544 U.S. 269 (2005). Posey includes with his petition a motion to stay the petition and hold it in abeyance pending exhaustion. (Docket # 2.) Accordingly, I will order that Posey's petition and accompanying motion be served on the respondent and that the respondent file a response to the request to stay the petition and hold it in abeyance within twenty-one (21) days of the date of this order.

NOW, THEREFORE, IT IS ORDERED that Posey's petition and accompanying exhibit be served on the respondent. The respondent shall respond to the request to stay the petition and hold it in abeyance within twenty-one (21) days of the date of this order.

Dated at Milwaukee, Wisconsin this 11th day of March, 2020.

BY THE COURT

s/Nancy Joseph

NANCY JOSEPH
United States Magistrate Judge